IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

COULAS VIKING PARTNERS, an Illinois general partnership, Plaintiff, v. THE BELT RAILWAY COMPANY OF CHICAGO, an Illinois corporation, and INGREDION INCORPORATED f/k/a Corn Products Manufacturing Company, a Delaware corporation, Defendants.	Case No. 16-cv-3583

DEFENDANT INGREDION INCORPORATED'S NOTICE OF REMOVAL

Defendant Ingredion Incorporated f/k/a Corn Products Manufacturing Company ("Ingredion"), by and through its counsel and pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, hereby removes this action from the Circuit Court of Cook County, Illinois, County Department, Chancery Division, to the United States District Court for the Northern District of Illinois, Eastern Division. In support thereof, Ingredion states as follows:

State Court Action

1. On December 27, 2013, Plaintiff Coulas Viking Partnersjoh ("Viking") filed suit against Defendant Belt Railway Company of Chicago ("Belt") under Cause No. 13 CH 28409, in the Circuit Court of Cook County, Illinois, County Department, Chancery Division, *Coulas Viking Partners, L.P. v. The Belt Railway Company of Chicago* (the "State Court Action"). Viking amended its complaint several times, and filed its Second Amended Complaint on January 12, 2015. A copy of the Second Amended Complaint (the "Complaint") filed in the

State Court Action is attached hereto (without exhibits) as **Exhibit A**.[1] Viking filed a jury demand and alleged causes of action for: (i) declaratory judgment; (ii) trespass; and, (iii) ejectment. *Id.* A copy "of all process, pleadings, and orders served upon" Ingredion in the State Court Action, as well as a copy of all operative pleadings is attached hereto as **Exhibit B(1)-(8)**.

2. Viking alleges that Belt does not have permission to use Viking's property for the operation of a spur line railway (the "Spur Line") that crosses over Viking's property, that a 1909 easement agreement (the "1909 Easement Agreement") that allowed Belt to do so terminated in 1912 as a result of Belt's predecessors' failure to obtain consent from Viking's predecessors to assign the easement agreement, and that Belt's continued use of the Spur Line constitutes a trespass on Viking's property. (Compl., ¶¶ 6-9, 13, 16-24, 26-33.) Viking seeks an order declaring that Belt has no legal right to use the Spur Line, enjoining Belt from using the Spur Line, and requiring removal of the Spur Line from the property altogether. (Compl., Prayer for Relief at pp. 10-12.)

3. Ingredion is a global ingredient solutions provider to the food, beverage, brewing and pharmaceutical industries as well as numerous industrial sectors. It uses corn, tapioca, potatoes and other raw materials to manufacture a myriad of ingredients.

4. Ingredion owns and operates a large manufacturing facility in Bedford Park, Illinois (referred to as the Argo, Illinois facility) on property adjacent to the land owned by Viking that is the subject of this litigation. (*See, e.g.*, Compl., ¶ 7.) The Spur Line that crosses Viking's property—which Viking seeks to prevent Belt from using—has been used for many decades and is being used to transport corn on rail cars to Ingredion's facility. (*See, e.g.*, Compl., ¶¶ 8-9.) Approximately 50% of the corn coming into Ingredion's Argo, Illinois facility is moved

[1] The Second Amended Complaint with exhibits is included as part of the record of the State Court Action, attached hereto as Exhibit B(1).COU

by Belt over the Spur Line. The Spur Line is crucial to the movement of corn products to Ingredion's facility. (*Id.*)

5. Ingredion was the original grantee of the easement across Viking's Property in the 1909 Easement Agreement, which granted Ingredion an easement in perpetuity for the construction, maintenance and operation of the Spur Line. (Compl., ¶ 17.) On the same day it entered into the 1909 Easement Agreement, Ingredion (then Corn Products Manufacturing Company), assigned the easement to Chicago Peoria Western Railway Company. (Compl., ¶ 21.) Since it was originally granted, the easement has been used to deliver corn to Ingredion's Argo, Illinois facility.

6. In addition, on or about August 3, 2006, Ingredion entered into a Track License Agreement with Belt for the staging of certain rail cars in Ingredion's possession, custody, or control on the Spur Line until such time that those rail cars and the corn in them could be moved into Ingredion's facility, and where the empty rail cars could be parked until removed by Belt.

7. On December 15, 2015, Ingredion filed its Motion to Intervene in the State Court Action. A copy of Ingredion's Motion to Intervene is attached hereto as **Exhibit C**. The court granted Ingredion's Motion to Intervene on February 23, 2016. A copy of the Feb. 23, 2016 Order granting Ingredion's Motion to Intervene is attached hereto as **Exhibit D**.

Timeliness of Notice of Removal

8. An intervenor may petition for removal as long as the intervenor does so within thirty (30) days of its motion to intervene being granted. *See Baker v. Nat'l Blvd Bank of Chicago*, 399 F. Supp. 1021, 1023 (N.D. Ill. 1975). Thus, in accordance with 28 U.S.C. § 1446(b)(3), this Notice of Removal is being filed within thirty (30) days of receipt by Ingredion

of a copy of the order granting Ingredion's Motion to Intervene, which was entered on February 23, 2016. *See* Ex. D, Feb. 23, 2016 Order.

9. Belt consents to the removal of the State Court Action.

Federal Question Jurisdiction

10. The doctrine of complete preemption "creates an exception to the rule that courts look only to the plaintiff's well-pleaded complaint to determine whether federal jurisdiction exists. If the complaint pleads a state-law claim that is completely preempted by federal law, the claim is removable to federal court." *In re Repository Techs., Inc.*, 601 F.3d 710, 722–23 (7th Cir. 2010). Thus, "under this jurisdictional doctrine, certain federal statutes have such extraordinary pre-emptive power that they convert an ordinary state common law complaint into one stating a federal claim." *Id.* at 722 (citation omitted).

11. The Interstate Commerce Commission Termination Act of 1995 ("ICCTA"), 49 U.S.C. § 10101, *et seq.*, gave the Surface Transportation Board ("STB") exclusive jurisdiction over:

> (1) transportation by rail carriers and the remedies provided with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, **routes, services, and facilities** of such carriers; and
>
> (2) the construction, acquisition, **operation, abandonment, or discontinuance of spur**, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one state.

49 U.S.C. § 10501(b) (emphasis added).

12. Congress has defined the term "transportation" under the ICCTA to include, among other things, railroad property, facilities, and equipment of any kind "related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement

concerning use; services related to that movement, including receipt, delivery . . . storage, handling, and interchange of passengers and property." 49 U.S.C. § 10102(9).

13. There are two manners in which the ICCTA can preempt state action: "(1) categorical, or *per se*, preemption, and (2) 'as applied' preemption." *Union Pac. R.R. Co. v. Chicago Transit Auth.*, 647 F.3d 675, 679 (7th Cir. 2011) (citing *CSX Transp., Inc. – Petition for Declaratory Order*, STB Fin. No. 34662, 2005 WL 1024490, at *2 (May 3, 2005)). State and local actions are categorically preempted when, regardless of the context or rationale for the action, they involve: (1) "permitting or preclearance that, by its nature, could be used to deny a railroad the ability to conduct some part of its operations or to proceed with activities that the Board has authorized;" or (2) the "regulation of matters directly regulated by the Board – such as the construction, operation, and abandonment of rail lines (*see* 49 U.S.C. §§ 10901–10907)." *CSX Transp., Inc.*, 2005 WL 1024490, at *2.

14. Courts have held that because a state may regulate through an award of damages as effectively as it may regulate "as through some form of preventative relief," a state common law cause of action may qualify as "regulation" for purposes of the ICCTA preemption. *See, e.g., Friberg v. Kan. City S. Ry. Co.*, 267 F.3d 439, 444 (5th Cir. 2001) (state claims of negligence and negligence per se concerning a railroad's alleged road blockages of road leading to plaintiff's business preempted); *Guckenberg v. Wis. Cent. Ltd.*, 178 F. Supp. 2d 954, 958 (E.D. Wis. 2001) (state law nuisance claim pertaining to railway traffic preempted); *Rushing v. Kan. City S. Ry. Co.*, 194 F. Supp. 2d 493, 500-01 (S.D. Miss. 2001) (state law nuisance and negligence claims that would interfere with operation of railroad switchyard preempted).

15. Viking alleges that the Spur Line is used to connect Ingredion's plant to the main line, *see* Compl., ¶ 10, and that Belt uses the Spur Line "on an almost daily basis," *see* Compl., ¶

13, to "park[] railroad cars . . . until they are needed." (*See* Compl., ¶ 10.) As part of the relief it seeks, Viking requests that the Court enjoin Belt from using the property upon which the Spur Line sits, require the removal of the Spur Line from the property, declare that Belt is not entitled to use the property upon which the Spur Line sits, and award it punitive damages. This amounts to a request that the Court order Belt to abandon the Spur Line, and is therefore categorically preempted by the ICCTA because the abandonment and operation of rail lines are "matters directly regulated by the Board." *See CSX Transp., Inc.*, 2005 WL 1024490, at *2; *Emerson v. Kan. City S. Ry. Co.*, 503 F.3d 1126, 1130 (10th Cir. 2007); 49 U.S.C. §§ 10901-10907.

16. State action is preempted "as applied" where the action has the effect of "preventing or unreasonably interfering with railroad transportation" or "otherwise unreasonably burdening interstate commerce." *Chicago Transit Auth.*, 647 F.3d at 679; *CSX Transp., Inc.*, 2005 WL 1024490, at **3-4. Viking's claims are preempted as applied because the relief sought by Viking would unreasonably interfere with and burden interstate commerce and/or railroad transportation provided by Belt to Ingredion using the Spur Line. Specifically, approximately 50% of the corn products purchased by Ingredion for its Argo, Illinois facility comes from Wisconsin and is transported to Ingredion's manufacturing facility over the Spur Line. (Motion to Intervene, ¶ 4; Ex. A to Motion, ¶¶ 12-13.) Ingredion has no reasonable and equivalent alternative other than the Spur Line to transport these products to its facility. (*Id.*) An order that the Spur Line can no longer be used would significantly and unreasonably burden Ingredion's ability to transport its products from Wisconsin to Illinois by forcing Ingredion to seek alternative means of transportation at far increased cost and considerable inconvenience. (Motion to Intervene, ¶ 14; Ex. A to Motion, ¶¶ 13-17.)

17. Under the doctrine of complete preemption, whether categorical or as applied, the preemptive force of the ICCTA is so complete that it transforms Viking's Complaint, although styled as containing ordinary common-law claims, into one stating a federal claim. *See Cedarapids, Inc. v. Chicago, Centr. & Pac. Ry. Co.*, 265 F. Supp. 2d 1005, 1013-1015 (N.D. Iowa 2003) (finding that state common law claims that would effectively require the abandonment of intrastate spur track preempted by ICCTA). Because Viking's Complaint seeks to make Belt completely discontinue rail service, abandon, and remove the Spur Line, and also would otherwise unreasonably burden interstate commerce, it should be "considered from its inception to raise a federal law and therefore arises under federal law" for removal purposes. *See id.*; *CSX Transp., Inc.*, 2005 WL 1024490, at *4. Accordingly, the State Court Action is removable to federal court pursuant to 28 U.S.C. § 1441 as an action arising under federal law.

Venue is Proper in This Court

18. The United States District Court for the Northern District, Eastern Division, is the District Court of the United States and the division thereof within which the State Court Action is currently pending.

Filing of Removal Papers

19. Pursuant to 28 U.S.C. § 1446(d), simultaneously with removing this action, Ingredion is providing written notice of removal to Viking's counsel, and filing a Notice of Removal with the Clerk of the Circuit Court of Cook County, Illinois. A copy of Ingredion's Notice of Removal being filed in the State Court Action is attached hereto as **Exhibit E**.

Relief Requested

20. Ingredion requests that the United States District Court for the Northern District of Illinois, Eastern Division, assume jurisdiction over the above-captioned action and issue such

further orders and processes as may be necessary to bring before it all parties necessary for the trial of this action.

WHEREFORE, Defendant Ingredion Incorporated hereby gives notice that the above-referenced action now pending against it in the Circuit Court of Cook County, Illinois has been removed to this Court.

Dated: March 24, 2016

Respectfully submitted,

BRYAN CAVE LLP

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Notice of Removal was served on March 24, 2016, via U.S. Mail, 1st Class, on or before the hour of 5:00 p.m. on the following:

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